

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2124 OF 2006

Kala Sagar Chitra Mandir Pvt. Ltd. ...Petitioner.
Vs.
Pimpri Chinchwad Municipal Corporation & Ors. ...Respondents.

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Mr. P.K. Dhakephalkar, Sr. Advocate with Mr. N.P. Shimpi for the
Petitioner.

Mr. N.V. Walawalkar, Sr. Advocate i/b. Mr. D.R. More for
Respondent No.1.

Mr. R.D. Rane, Addl. G.P. for Respondent Nos.2, 3 and 5.

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**CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.**

April 21, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

Rule, by consent of Counsel returnable forthwith.
Counsel appearing on behalf of the Respondents waive service.
By consent of Counsel and at the request of Counsel taken up for
hearing.

2. The Petitioner was allotted a plot of land admeasuring
5660 sq.mtrs. by the Maharashtra Industrial Development
Corporation at village Bhosari, in the Taluka of Haveli, in the

District of Pune. The plot has a frontage on the National Highway (NH4) which connects Bombay and Pune. The plot was allotted to the Petitioner for putting up a Hotel and the Petitioner applied for the sanction of construction plans. The proposed width of Bombay-Pune Highway (NH4) was shown in the Development Plan published in the course of the year 1986 as 61 meters. Accordingly, it has been stated that the Petitioner had to submit a construction plan for making construction on an area which would be at a distance of more than 30.60 meters from the Centre Line of the proposed road. The plan for construction was submitted to the First Respondent and to MIDC and it has been stated that an order of sanction was passed by the First Respondent keeping in mind the proposed expansion of the National Highway to the extent of 61 meters. The contention of the Petitioner is that the construction was carried out exactly in accordance with the sanctioned plan and a completion certificate came to be issued by the First Respondent. According to the Petitioner, the entire construction including the compound wall is at a distance of at least 30.60 meters from the Centre Line of the National Highway.

3. Subsequently, since some space in front of the compound wall was lying open as the National Highway was still to be expanded to a width of 61 meters, the petitioner claims to have “beautified” the aforesaid space by putting up plants and trees. On 2nd December 2005, notices were received by the Petitioner from the First Respondent under Sections 53 and 56 of the Maharashtra Regional and Town Planning Act, 1966 alleging that the Petitioner had made an unauthorised construction in an area of 103.75 sq.mtrs. The officers of the Corporation are stated to have inspected the area where plants and trees were placed by the Petitioner beyond the compound wall and the Petitioner was informed that the aforesaid work should be removed. The Petitioner has stated that this was agreed upon and that the work which had been carried out on a portion admeasuring 103.75 sq.mtrs. beyond the compound wall came to be removed in order to facilitate the laying of a pipe line by the First Respondent.

4. Thereafter, the Petitioner received another notice dated

15th February 2006 under Section 12(2) of the Land Acquisition Act, 1894, informing the Petitioner of the passing of an award in acquisition proceedings and informing him that an amount of Rs.6,04,493/- would be paid as compensation in respect of an area admeasuring 103.75 sq.mtrs. of land. Another notice of the same date was issued by which the Petitioner was informed that the Third Respondent would take possession of an area admeasuring 103.75 sq.mtrs. from the Petitioner's land bearing survey No.517.

5. The contention of the Petitioner is that in pursuance of the earlier notice dated 2nd December 2005 which had objected to unauthorised work carried out by the Petitioner on an area admeasuring 103.75 sq.mtrs. beyond the compound wall, the Petitioner had, in fact, removed that part of the work which was beyond the compound wall. The case of the Petitioner is that under the Development Plan of the First Respondent that was sanctioned under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 with effect from 2nd November 1995, the width of the National Highway (NH-4) is shown as 61 meters. In

other words, there is no change from the area as reflected in the original development plan of 1986. Hence, it was urged that there is absolutely no question of any part of the land of the Petitioner being required to be acquired since every part of the construction that has been carried out is at a distance of more than 30.60 meters from the centre line of the Highway. The declaration dated 10th December 2003, issued under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894, stipulates that the notification relates to acquisition of land required for the public purpose of the Mumbai-Pune National Highway to the extent of 61 meters. In sum and substance therefore, the contention of the Petitioner is that when the plan for the construction of the Petitioner's Hotel was sanctioned on 18th September 1986 that was on the clear basis that the compound wall of the Petitioner's premises would have to be at a distance of 30.60 meters from the Centre line and that was duly observed. The acquisition in question is for the widening of the National Highway to the width of 61 meters which is the width that has been always reflected in the

Development Plan. Even a physical measurement of the compound wall from the Centre line would show that the distance between the centre line of the Highway and the compound wall of the Petitioner's premises is 30.60 meters. Hence, the proposed acquisition, it has been submitted, of the Petitioner's land is not warranted, since the width of the National Highway is admittedly 61 meters.

6. In reply to the petition, an affidavit has been filed on behalf of the First Respondent by the Deputy City Engineer in the Building Permissions Department. It has been stated in the reply that in or about 1978, the sanctioned Development Plan for the Pimpri-Chinchwad Nagar Palika, the predecessor of the First Respondent, showed the width of the proposed Development Plan Road as 61 meters. In 1986, the building plan of the Petitioner was sanctioned by the First Respondent at which time, the width of the existing Bombay-Pune Road was 25 meters. The special unit of the Second Respondent which carried out the work of preparing the Draft Development Plan prepared a plan in the year 1987 in

which a 61 meter wide road was shown. The plan was subsequently sanctioned in the year 1995 by the State Government. There is a railway line running on the western side of the said D.P. Road, and the road line on the Western side of the DP Road had to be demarcated. In 1988, a 30 meter road (out of the 61 meter wide D.P. Road as envisaged in the development plan) was constructed by acquiring those properties then affected by the said road widening. Thereafter, it was proposed to widen the road to 61 meters as demarcated on the road lines on East-West. In the proposal the western side of the 30 meter wide road will have to be widened to 12.5 meters from the western edge of 30 meter road and on the Eastern side of the 30 meter road, it will have to be widened to 18.5 meters from the Eastern edge of 30 meter road. A similar affidavit has been filed by the Town Planer working in the Town Planning Department.

7. We have heard Counsel appearing on behalf of the contesting parties and we have been taken through the pleadings, replies and annexures attached thereto including the relevant plan.

From the material which has been placed before the Court, the following circumstances are undisputed:

-(i) The original width of NH-4 in the Development Plan sanctioned by the State Government under Section 31(1) of the Maharashtra Regional and Town Planning Act, 1966 remains unchanged;

-(ii) A width of 61 meters is the declared width which was designated prior to 1986 when the building plan of the Petitioner came to be sanctioned and even thereafter under the sanctioned Development Plan of 1995 the same width of 61 metres is designated;

-(iii) The distance of the compound wall of the Petitioner from the centre line of the road is 30.60 meters and no part of the construction of the Petitioner falls within the aforesaid distance;

-(iv) In response to a notice received from the Municipal

Corporation on 2nd December 2005, the Petitioner had, in fact, removed the work which had been carried out on an area admeasuring 103.75 sq.mtrs. in the open space beyond the compound wall;

-(v) The width of the National Highway of 61 meters and its alignment as originally envisaged have not been modified until the present;

-(vi) The proposed acquisition of 103.75 sq.mtrs. within the compound wall of the Petitioner is for the purpose of the widening of NH-4 to a width 61 meters. In this state of the record, it is evident that no part of the property belonging to the Petitioner falls within the width of 61 meters which is prescribed in the Development Plan in respect of NH-4. The compound wall of the Petitioner is at a distance of 30.60 metres from the centre line of the Highway. In matters of acquisition, the Court indeed exercises its jurisdiction with extreme circumspection. However, the affidavit which has been filed before the Court on behalf of the First

Respondent and the Town Planner will clearly demonstrate that it is not the case of the Respondents that any part of the property belonging to the Petitioner falls within a distance of 30.60 meters from the centre line of NH-4 as demarcated. Photographs have been produced before the Court demonstrating that the centre line of the road has been duly demarcated and that electric poles have been put up by the First Respondent along the centre line. That being the position, it is not, in our view, open to the First Respondent to selectively acquire the land of the Petitioner for the purposes of road widening of NH-4 beyond the width that is stipulated in the sanctioned development plan. The sanctioned building plan dated 18th September 1986 duly endorsed by the City Engineer of the Pimpri Chichwad Municipal Corporation has been annexed at Exh.E. The plan clearly shows a distance of 30.60 meters between the compound of the establishment of the Petitioner and the centre line of the road. The correctness of the sanctioned plan has not been disputed before the Court either on affidavit or in the submissions urged on behalf of the Respondents. In fact, it would be necessary to emphasise that the statement of

the Petitioner that the distance between the compound wall and the centre line is 30.60 meters has not been disputed at all. In these circumstances, the Petitioner is entitled to relief in these proceedings.

8. The petition is accordingly allowed by quashing and setting aside the declaration under Section 126(4) of the Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894, in relation to the acquisition of 103.75 sq.mtrs. of land belonging to the Petitioner comprised in Survey No.517 (part). Consequently, the notice dated 15th February 2006 issued to the Petitioner under Section 12 (2) and Section 16 of the Land Acquisition Act, 1894, shall stand quashed and set aside. However, while doing so, it is clarified that this shall not preclude the authorities from taking recourse to their powers in accordance with law should there be any enhancement of the sanctioned width of the D.P. Road or a modification of its alignment in accordance with law. The petition is accordingly disposed of. There shall be no order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.